

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT LYNN JACKSON, JR., et
al.,

Plaintiffs,

v.

CITY OF MOUNTLAKE
TERRACE, et al.,

Defendants.

CASE NO. C16-1282JLR

ORDER REGARDING
PLAINTIFFS' RESPONSE TO
THE CITY'S MOTION FOR
SUMMARY JUDGMENT

The court has received Plaintiffs' response (Resp. (Dkt. # 29)) to Defendants City of Mountlake Terrace ("the City"), Brian Moss and Matt Porter's motion for summary judgment (SJ Mot. (Dkt. # 19)). In their response, Plaintiffs state that they "seek[] to drop their remaining claims pursuant to [Federal Rule of Civil Procedure] 41." (Resp. at

2.) Rule 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).¹

The court should grant a motion for voluntary dismissal unless the defendant shows it will suffer some plain legal prejudice as a result. *See Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987); *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982). A defendant may show plain legal prejudice by demonstrating that voluntary dismissal threatens actual legal rights or may result in extreme or unreasonable monetary or other burdens. *See Watson v. Clark*, 716 F. Supp. 1354, 1356 (D. Nev.1989), *aff’d*, 909 F.2d 1490 (9th Cir. 1990). Factors to consider in determining legal prejudice may include: (1) the defendant’s effort and expense in preparing for trial; (2) the plaintiff’s excessive delay and lack of diligence in prosecuting the action; (3) insufficient explanation of the need to take a dismissal; and (4) the fact that the defendant has moved for summary judgment. *See Fischer v. Zespri Fresh Produce N. Am., Inc.*, No. 1:07-CV-00610LJO, 2007 WL 2385074, at *9 (E.D. Cal. Aug. 17, 2007) (citing *Paulucci v. City of Duluth*, 826 F.2d 780, 783 (8th Cir. 1987); *Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994); and *United States v. Outboard Marine Corp.*, 789 F.2d 497, 502 (7th Cir. 1986)).

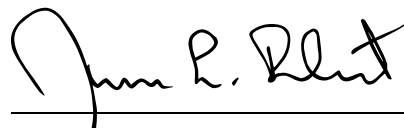
The court construes Plaintiffs’ response as a motion to dismiss their complaint under Rule 41(a)(2), and DIRECTS the Clerk to note it as such on the court’s docket for

¹ Plaintiffs are not eligible to dismiss this action by filing a notice of dismissal because the remaining Defendants have filed both an answer and a motion for summary judgment. *See* Fed. R. Civ. P. 41(a)(1)(A)(i). In addition, the parties have not filed a joint stipulation of dismissal. *See* Fed. R. Civ. P. 41(a)(1)(A)(ii).

1 Thursday, March 30, 2017. In addition, the court notes that Defendants have a pending
2 motion for summary judgment. (*See* SJ Mot.) Accordingly, the court ORDERS
3 Plaintiffs to file a memorandum stating whether they seek a voluntary dismissal with
4 prejudice or without prejudice no later than Thursday, March 23, 2017. If Plaintiffs seek
5 a dismissal without prejudice, the court further ORDERS Plaintiffs to explain in the same
6 memorandum why they are so entitled. *See Pace v. S. Express Co.*, 409 F.2d 331, 334
7 (7th Cir.1969) (citing 5 Moore's Federal Practice § 41.05(1) (2d ed. 1968)) (holding that
8 the district court properly denied dismissal without prejudice where discovery was
9 considerably advanced and defendant's motion for summary judgment was pending).
10 Plaintiffs shall limit their memorandum to no more than six pages.

11 The court ORDERS Defendants to respond to Plaintiffs' Rule 41(a)(2) motion to
12 dismiss and supplemental memorandum within seven days of the filing date of this order
13 and indicate if they have any objection to the dismissal of this case. Defendants shall
14 limit their response to no more than six pages. Plaintiffs may file a reply to Defendants'
15 response no later than Thursday, March 30, 2017. Plaintiffs shall limit their reply to
16 more than three pages.

17 Dated this 21st day of March, 2017.

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20 JAMES L. ROBART
21 United States District Judge
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